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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,432	09/08/2003	Barry G. Anderson	015005-9426-02	9042

23409 7590 01/11/2006

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EXAMINER

ANDERSON, CATHARINE L

ART UNIT PAPER NUMBER

3761

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SR

<b>Office Action Summary</b>	<b>Application No.</b> 10/657,432	<b>Applicant(s)</b> ANDERSON ET AL.	
	<b>Examiner</b> C. Lynne Anderson	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/8/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first port having a boss extending downwardly into the container, in combination with a pre-attached tube coupled to the first port and the second port having a boss extending upwardly, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-9, 21-24, 28-30, 33-36, and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (4,475,904).

With respect to claims 1, 4, and 7, Wang discloses medical apparatus comprising a suction apparatus 11 having an interior 16, a cover 13, and a port in the cover, as shown in figure 1. The apparatus further comprises a drainage device including a housing 31 and support member which supports the suction apparatus 11, as shown in figure 4. A first conduit 18 is coupled to the port and extends into the interior 16, as shown in figure 1. A second conduit 19 has a first end coupled to the station and a second end coupled to the port, as shown in figure 1.

With respect to claims 5 and 8, the first and second conduits include flexible tubing, as disclosed in column 1, lines 31-33.

With respect to claims 3, 6, and 9, the apparatus is a liner-type apparatus, as shown in figure 4.

With respect to claims 21 and 33, Wang discloses a method of handing fluid comprising providing a suction canister 11 having an interior 16 and a cover 30, connecting the canister to a vacuum source 17, and removing fluid from the patient, as shown in figure 1. The canister 11 is disconnected from vacuum source 17, as

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disclosed in column 3, lines 66-68, and a first conduit 18 is provided extending into the interior 16 of the container 11. A second conduit 19 is connected to the first conduit 18, as disclosed in column 3, lines 11-12, and fluid is removed via the first and second conduits, as disclosed in column 4, lines 8-11.

With respect to claims 22 and 34, the canister 11 is positioned upright during removal of fluid, as shown in figure 3.

With respect to claims 23 and 35, the first conduit 18 extends to a point near the bottom of the interior 16, as shown in figure 1.

With respect to claims 24 and 36, the first conduit 18 is provided prior to connecting the canister 11 to the vacuum source 17, as disclosed in column 3, lines 5-8, since the first conduit 18 is provided prior to sealing the canister 11.

With respect to claims 28 and 40, a drainage device 12 is provided in communication with the second conduit 19, as shown in figure 1.

With respect to claim 29, the cover 30 has a port, and the first conduit 18 is in communication with the port, as shown in figure 1.

With respect to claim 30, the second conduit 19 is in communication with the port, as shown in figure 1.

Claims 10-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Theodoru (5,720,299).

With respect to claims 10 and 17, Theodoru discloses a medical suction apparatus, as shown in figure 4, comprising a fluid container 12 having an interior and a

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cover 30. The cover 30 has a port 32, a first port wall 32b extending into the container 12, and a second port wall 32a extending in the opposite direction. A conduit 34 is coupled to the first port wall 32b.

With respect to claims 11 and 20, the container 12 is a liner-type container.

With respect to claims 12 and 18, a second conduit 40 is coupled to the second port wall 32a, as shown in figure 6.

With respect to claim 13, the first and second port walls are integrally connected, as shown in figure 4.

With respect to claims 14 and 15, the container 12 has a bottom wall portion 28a, and the first conduit 34 extends at least 75% of the length of the container 12 such that the second end 34a is adjacent the bottom wall portion 28a, as shown in figure 4.

With respect to claim 16, the conduit 34 is coupled to the first port wall 32b via friction fit, as disclosed in column 5, lines 54-56.

With respect to claim 19, the conduit 34 is flexible, as disclosed in column 5, lines 48-58.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 25-26, 31-32, and 37-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (4,475,904) in view of Theodoru (5,720,299).

Wang discloses all aspects of the claimed invention with the exception of the port having upwardly and downwardly extending bosses. Wang remains silent as to the connection of the conduits 18 and 19 to the cover 30.

Theodoru teaches the use of a port having upwardly and downwardly extending bosses for the connection of conduits to the cover of a suction canister, as shown in figure 4. The bosses allow for flexible conduits to be manually attached to the cover to provide a secure seal, as disclosed in column 5, line 48, to column 6, line 11.

It would therefore be obvious to one of ordinary skill in the art at the time of invention to provide the port in the cover of Wang with upwardly and downwardly extending bosses, as taught by Theodoru, to allow for flexible conduits to be manually attached to the cover to provide a secure seal.

Claims 27 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wang (4,475,904).

Wang discloses all aspects of the claimed invention with the exception of the step of disposing of the canister with the first conduit inside the container portion. Wang remains silent as to the disposal of the canister. The first conduit is provided within the canister, and therefore disposal of the canister without the first conduit would require opening the canister and exposing the fluids within. It would therefore be obvious to one of ordinary skill in the art at the time of invention to dispose of the canister of Wang

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with the first conduit inside the container portion so as not to expose the fluids within the canister.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6-7, 9-11, 17, and 20 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-11 of U.S. Patent No. 6,626,877. Although the conflicting claims are not identical, they are not patentably distinct from each other because the liner of the patented claims and the medical suction apparatus of the instant claims can be comparable structures.



**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents 3,381,687; 4,643,197; and 6,652,495 disclose medical suction devices comprising an apparatus including a cover with ports.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (571) 272-4932. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WMA  
cla  
January 6, 2006

**TATYANA ZALUKAEVA**  
**SUPERVISORY PRIMARY EXAMINER**

